Supreme Court No. 98905-2

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

IN RE DEPENDENCY OF M.A.S.C., Minor Child,

STATE OF WASHINGTON,
Respondent,

v.

J.C-C,
Petitioner.

BRIEF OF AMICI CURIAE KING COUNTY DEPARTMENT OF PUBLIC DEFENSE, DISABILITY RIGHTS WASHINGTON, AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON, THE MOCKINGBIRD SOCIETY, AND WASHINGTON DEFENDER ASSOCIATION

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I. INTRODUCTION

When, as here, services provided during a dependency case fail to comply with Section II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Sec. 504), and fail to comply with the dependency statute's mandate to consult with the Developmental Disabilities Administration (DDA), the Department of Children Youth and Families (DCYF) cannot prove—by clear and convincing evidence—that all necessary services were offered or provided, as required in the termination statute.

II. ISSUES PRESENTED FOR REVIEW

1. Whether, pursuant to RCW 13.34.180(1)(d), DCYF must demonstrate that it complied with the baseline standards required by the ADA and Sec. 504 when providing services to parents with disabilities.

2. Whether RCW 13.34.180(1)(d) and RCW 13.34.136(2)(b)(i)(B) require DCYF to consult with (DDA) when, as here, a parent may have a qualifying developmental disability.

III. BACKGROUND

A. Parents with Disabilities Experience Discrimination

Until the 1960s, the majority of people with intellectual disabilities were institutionalized, segregated from the rest of the community, and subjected to sterilization out of a fear that procreation and child rearing by

parents with disabilities would perpetuate disabilities.[1] Although sterilization is no longer the norm, parents with intellectual disabilities are still more likely to encounter child welfare services and their children are removed at a rate as high as 40 percent to 80 percent.[2]

The National Council on Disabilities found that, "[s]ystematic discrimination by state courts, child welfare agencies, and legislatures against parents with disabilities and their families has taken a toll." *Id.* at 76-84. Parents with intellectual disabilities face "significant discrimination based largely on ignorance, stereotypes, and misconceptions." *Id.* at 68. Although parents with intellectual disabilities are capable of safely parenting and, where there is a parenting deficiency, capable of learning new skills, *Id.* at 216-27, child welfare agencies often fail to provide meaningful access to parenting services and when they do provide services, fail to tailor services to the parent's intellectual disability. Instead, parents with disabilities are often "held to a higher standard of parenting than non-disabled parents." *Id.* at 14, 18.

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[1] Katie MacLean and Marjorie Aunos, *Addressing the Needs of Parents With Intellectual Disabilities: Exploring a Parenting Pilot Project*, 16.1 Journal on Developmental Disabilities 18 (2010).

[2] Nat'l Council On Disability, *Rocking The Cradle: Ensuring The Rights Of Parents With Disabilities And Their Children* 16 (2012) (hereafter "Rocking The Cradle") available at: https://www.ncd.gov/sites/default/files/Documents/NCD_Parenting_508_0.pdf.

Once involved in the child welfare system, children of parents with disabilities are permanently separated from their families at disproportionately high rates. *Id.* at 18. Some states, including Washington, create presumptions in *favor* of termination based on the "mental deficiency" of the parent. RCW 13.34.180(1)(e)(ii) (instructing the trial court to consider "mental deficiency of the parent" as a basis for satisfying one element of the termination statute).

B. Federal Agencies Provide Guidance to Correct Widespread Discriminatory Treatment of Parents with Disabilities by Child Welfare Agencies

In response to numerous complaints of discrimination against parents with disabilities, in 2015, the United States Department of Health and Human Services (HHS) and Department of Justice (DOJ) issued technical assistance to state child welfare agencies clarifying the requirements of the ADA and Sec. 504 for parents with disabilities who find themselves involved in dependency proceedings.[3] According to that

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[3] *See* United States Department of Health and Human Services and the United States Department of Justice, *Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act*, August 2015, (hereafter "DOJ/HHS Technical Assistance") https://www.hhs.gov/sites/default/files/disability.pdf; *see also* Findings and Purposes of ADA Amendments Act of 2008, Pub. L. 110-325, Sec. 2, Sept. 25, 2008, 122 Stat. 3553 (finding individuals with intellectual disabilities were excluded from participating in and denied access to services because of "prejudice, antiquated attitudes, or the failure to remove societal or institutional barriers.").

technical assistance, the ADA and Sec. 504 apply to "*all* child welfare-related activities and programs" including "assessments, removal of children from their homes, case planning and service planning, visitation, guardianship, adoption, foster care, reunification services, and family court proceedings." *Id.* at 8.

The DOJ/HHS technical assistance arose out of an investigation into child welfare practices in Massachusetts. Sarah Gordon, a mother with a developmental disability, filed a complaint alleging disability discrimination after her daughter was removed two days after her birth. The DOJ concluded that the Massachusetts Department of Children and Family Services had discriminated against Ms. Gordon by failing to conduct an individualized assessment of her needs and by repeatedly and continuously denying her the opportunity to benefit from the agency's services.[4] Then, last year, DOJ and HSS reached a landmark agreement with the State of Massachusetts Department of Children and Families, in which the state agreed, among other things, to ensure that child welfare-involved parents

[4] *See* 2015 DOJ/HHS Joint Letter of Findings, *Investigation of the Massachusetts Department of Children and Families by the United States Departments of Justice and Health and Human Services Pursuant to the Americans with Disabilities Act and the Rehabilitation Act* (DJ No. 204-36-216 and HHS No. 14-182176) (hereafter "2015 DOJ/HHS Joint Letter of Findings"), https://www.ada.gov/ma_docf_lof.pdf.

with disabilities are afforded an opportunity to preserve their families equal to the opportunity offered to individuals without disabilities.[5]

This case arises against this backdrop of increased awareness of and attention to the discriminatory treatment of parents with disabilities.

IV. ARGUMENT

A. Parents with Intellectual Disabilities Have a Constitutionally Protected Right to Form Families and to Raise Their Own Children and Their Children Have a Right to Family Integrity

The right to parent, "is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme Court]," and "does not evaporate simply because [a parent has] ... lost temporary custody of their child to the State." *Matter of Welfare of M.B.*, 195 Wn.2d 859, 868, 467 P.3d 969, 974 (2020) (citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) (plurality opinion); *Santosky v. Kramer*, 455 U.S. 745, 758, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)).

At a termination trial, parents with intellectual disabilities are vulnerable to incorrect judgements about their ability to parent based solely on their disability. As this Court recently recognized, the inquiry in a termination of parental rights case, "is the type of inquiry that gives judges

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[5] 2020 Agreement Between United States Department Of Justice, United States Department Of Health And Human Services, And Massachusetts Department Of Children And Families, https://www.ada.gov/mdcf_sa.html (hereafter 2020 DOJ/HHS Agreement).

an unusual level of discretion and is particularly vulnerable to subjective judgments." *Matter of Welfare of M.B.*, 195 Wn.2d at 870.

Children of parents with a disability share an interest in preventing the erroneous termination of their family. *See Matter of Welfare of D.E.*, 196 Wn.2d 92, 103, 469 P.3d 1163, 1169 (2020). Termination does not necessarily result in positive outcomes for children. Although termination is seen as a precursor to adoption, research shows between 10 to 25 of pre-adoptive placements disrupt before the adoption is finalized.[6] And, among *finalized* adoptions in Washington, 6.2 out of 100 result in a new foster care placement.[7] Children who experienced adoption are approximately four times as likely to have a reported suicide attempt. Margaret A. Keyes *et al.*, *Risk of suicide attempt in adopted and nonadopted offspring*, 132.4 Pediatrics, 639-646 (2013). And many children who lose their families of origin are never adopted and age out of foster care as legal orphans. Lashanda Taylor, *Resurrecting Parents of Legal Orphans: Un-Terminating Parental Rights*, 17 Va. J. Soc. Pol'y & L. 318, 326 (2010).

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[6] Child Welfare Information Gateway, *Adoption disruption and dissolution*, Children's Bureau (2012) (available at: https://www.childwelfare.gov/pubPDFs/s_disrup.pdf).
[7] Department of Children Youth and Families, *Families First Prevention Services Plan*, p. 10 (2019) (available at: https://www.dcyf.wa.gov/sites/default/files/reports/12192019_FFPSA%20Prevention%20Plan%20FINAL.pdf).

B. In Order to Prevent the Erroneous Termination of the Rights of Parents with Disabilities, Courts Must Consider Whether Services Provided to the Parent During the Dependency Complied with Federal Disability Laws

To ensure that parents with disabilities are provided the accommodations necessary to keep their families together and to prevent discrimination, before terminating parental rights courts must consider whether services complied with federal disability law.

1. To Demonstrate that All Necessary Services Were Provided to a Parent with a Disability, the Services Must Comply with Federal Disability Law

Both the dependency statute and federal disability law require that, prior to terminating parental rights, a parent must be provided with services tailored to the individual needs of the parent. At a termination trial, the court is required to review the services provided to the parent during the course of the underlying dependency case and evaluate whether, among other things, the parent was provided all necessary services. *See* RCW 13.34.180(d). "[T]he inquiry is not limited to services ordered by the court during the dependency, but rather the Department must show it offered all necessary available services." *Matter of I.M.-M.*, 196 Wn. App. 914, 921, 385 P.3d 268, 271-72 (2016). "A service is 'necessary' if it is needed to address a condition that precludes reunification[.]" *Id.* at 921.

To satisfy its burden at trial, DCYF must demonstrate that the services it offered or provided were tailored to the parent's needs and

actually capable of remedying a parent's deficiencies. *See* DCYF Second Sup. Br. at 2; *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001) (holding that the Department "must tailor the services offered to the individual's needs"); RCW 13.34.025(1) (requiring the department to "[d]evelop treatment plans for the *individual needs* of the client").[8]

Likewise, the purpose of federal disability law is to ensure that individuals with a disability receive individualized assessments and services. *See* 28 C.F.R. 35.139(b). Accordingly, when a court is considering whether the state offered a parent all necessary services under RCW 13.34.180(1)(d), that inquiry must consider whether services offered were tailored to the individual needs of the parent and provided in an accessible way, as required by federal disability law. *See e.g., In re Hicks/Brown*, 500 Mich. 79, 86, 893 N.W.2d 637, 640 (2017) (finding under obligations under the ADA "dovetail" with obligations under the state termination statute).

If this inquiry is not an aspect of the court's decision-making at termination, then a parent with a disability can be denied accommodations necessary to reunify with their child throughout the life of the dependency case, and then lose their rights to their child altogether because they cannot

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[8] The dependency statute specifies how the petitioner is required to articulate what services are necessary. *See* RCW 13.34.430 (requiring the petitioner articulate why requested services and activities are likely to be useful); RCW 13.34.130(1)(a) (requiring courts to order services that "least interfere with family autonomy").

demonstrate their ability to parent without appropriate, legally required, accommodations. Ignoring disability law when terminating parental rights would eviscerate the very protections those laws were intended to provide.

To prevent the erroneous termination of the rights of parents with disabilities, DCYF bears the burden of demonstrating that it provided the parent with "all necessary services" pursuant to RCW 13.34.180(1)(d)—including a showing that it properly tailored services to the individual needs of the parent as required by the ADA and Sec. 504.

2. DCYF—Like Other Public Entities—Must Provide Individual Treatment and Meaningful and Equal Access to Their Programs

The DOJ/HHS Technical Assistance identified two principles that are fundamental to the ADA and Section 504 regarding the administration of child welfare programs: (1) individualized treatment; and (2) full and equal opportunity. DOJ/HHS Technical Assistance at 4.[9]

[9] Moreover, Washington state law recognizes the right to be free from discrimination because of mental or physical disability as a civil right. RCW 49.60.030(1). Courts have consistently found that the Washington Law Against Discrimination (WLAD) mandates liberal construction to deter and eradicate discrimination. *See Martini v. Boeing Co.*, 137 Wn.2d 357, 364, 971 P.2d 45 (1999), *Burchfiel v. Boeing Corp.*, 149 Wn. App. 468, 205 P.3d 145 (2009), *Kilian v. Atkinson*, 147 Wn.2d 16, 23, 50 P.3d 638, 640 (2002). The WLAD embodies a public policy of the highest priority. *Xieng v. Peoples Natl. Bank*, 120 Wn.2d 512, 521, 844 P.2d 389 (1993). Furthermore, courts have found that the WLAD prohibits discrimination in a broader range of contexts than does the ADA. *Marquis v. City of Spokane*, 130 Wn.2d 97, 110-11, 922 P.2d 43 (1996).

Individualized treatment means, at minimum, that "[i]ndividuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence" and not on the basis of "generalizations or stereotypes." *Id.* at 4. In particular, "service plans should not rely on fears or stereotypes to require parents with disabilities to accept unnecessary services or complete unnecessary tasks to prove their fitness to parent when nondisabled parents would not be required to do so." *Id.* at 13.

A full and equal opportunity means that parents with disabilities "must be provided opportunities to benefit from or participate in child welfare programs, services, and activities that are equal to those extended to individuals without disabilities." *Id.* at 4-5. The ADA recognizes that public entities, like DCYF, are required to provide reasonable accommodations to ensure that parents with disabilities have the same opportunities to benefit from services as parents without disabilities. *See* 28 C.F.R. 35.130(b)(1).

The ADA and Sec. 504 require that child welfare agencies and courts make changes in policies, practices, and procedures to accommodate parents with a disability unless doing so would result in a fundamental alteration to the nature of the program. *Id.* at 10 (noting that "child welfare agencies may be required to provide enhanced or supplemental training, to increase frequency of training opportunities, or to provide such training in familiar environments conducive to learning.").

DCYF cannot meet its burden of showing it provided all necessary services to a parent with a disability without demonstrating that the parent received individual treatment and a full and equal opportunity to benefit from services; any accommodations required by federal disability law would be necessary for the parent to access and benefit from the service.

3. The Department Cannot Deny Necessary Services for Parents with Disabilities by Failing to Make Such Services Reasonably Available

By statute, the Department must provide necessary services that are "reasonably available." RCW 13.34.180(1)(d); *Matter of D.H.*, 195 Wn.2d 710, 727, 464 P.3d 215, 224 (2020). However, in order to provide parents with a disability an equal opportunity to benefit from services, DCYF may be required to provide aids, benefits, and services different from those provided to other parents where necessary to obtain the same result or gain the same benefit, such as family reunification. DOJ/HHS Technical Assistance at 9. Such assistance must be provided unless doing so would result in a fundamental alteration. *Id.*; 42 U.S.C. 12182(b)(2)(A)(ii) (stating that failure to make reasonable modifications constitutes discrimination).[10]

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[10] S*ee also Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 604, 119 S. Ct. 2176, 2189, 144 L. Ed. 2d 540 (1999) (holding that the fundamental-alteration component of the reasonable-modifications regulation requires states to show that, in the allocation of available resources, "immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities").

Unless providing that service would result in a fundamental alteration of the program, DCYF cannot meet its burden at termination by asserting that a service is not reasonably available when that service is a necessary accommodation for a parent with a disability,

C. At Termination, DCYF Must Prove Coordination with DDA When a Parent has a Developmental Disability

The termination statute instructs the court to consider services ordered pursuant to RCW 13.34.136, the "permanency plan of care." RCW 13.34.180(d). The "permanency plan of care" requires the department to coordinate services with DDA whenever a parent is eligible for DDA services. RCW 13.34.136(2)(b)(i)(B). In such cases, "the plan for services must be tailored to correct the parental deficiency taking into consideration the parent's disability…." *Id.*; *Matter of I.M.-M.*, 196 Wn. App. at 924 (finding that, in that case, if DCYF had obtained a comprehensive mental health evaluation revealing a developmental disability diagnosis, "it would have been statutorily obliged" to refer for DDA services and coordinate a care plan).

According to the legislature, the intent of this provision was to "assure that for parents with developmental disabilities, the department [] takes into consideration the parent's disability when offering services to correct parental deficiencies." Laws of 2014, ch. 163, § 1. The legislature

expected that DCYF would affirmatively "contact" the developmental disabilities administration. Laws of 2014, ch. 163, § 1.

Because RCW 13.36.136 requires DCYF to contact DDA when a parent has a developmental disability, DCYF cannot meet its burden under RCW 13.34.180(d), and terminate the rights of a parent with a developmental disability, without first contacting DDA to determine whether the parent is eligible for services.

D. DCYF Failed to Provide J.C-C With All Necessary Services Because the Services Ordered Were Not Based on Her Individual Needs and Did Not Offer Her an Equal Opportunity to Benefit from Services

Here, DCYF failed to demonstrate that it offered or provided J.C-C with all necessary services because the state failed to provide services in accordance with the ADA and Sec. 504. DCYF never determined whether or in what way J.C-C's disability impaired her parenting or learning and instead developed an extensive service plan that was disconnected from any underlying parenting deficiencies and unadapted to J.C-C's individual needs.

1. The Services Offered to the Mother Were Based on Generalizations and Contained Unnecessary Tasks Not Required of Non-Disabled Parents

According to the DOJ/HHS Technical Assistance, service plans should not "require parents with disabilities to accept unnecessary services or complete unnecessary tasks to prove their fitness to parent when nondisabled parents would not be required to do so." DOJ/HHS Technical

Assistance at 13. Here, the tasks that DCYF required of J.C-C established a separate and higher standard for her than for non-disabled parents.

The very first court-ordered service listed for J.C-C set the bar for her higher than the law allows; she was ordered to "live a lifestyle that is safe, stable, healthy and provide for *all* the needs for herself *and* her child." Ex. 5 (emphasis added). The assumption contained in that requirement, that a parent with a disability must demonstrate the ability to parent entirely on her own, was one of the assumptions that gave rise to DOJ and HHS's findings against the State of Massachusetts. *See* 2015 DOJ/HHS Joint Letter of Findings at 14. DOJ and HHS faulted the authorities in Massachusetts for disregarding the mother's family supports. *Id.* at 13. Likewise, here, DCYF demanded that J.C-C show she was capable of meeting all of her child's needs on her own without support.

The other tasks the mother was mandated to complete similarly set an unreachably high bar for any parent. Query whether non-disabled parents are required: to "live a life that promotes independent living, good decision making and coping skills, and good health;" to "increase their positive self image;" or to pursue *both* "stable employment" *and* "educational/vocational opportunities." *See* Ex. 5. These service requirements were not based on "facts and objective evidence," as required by the DOJ and HHS Guidance,

and instead appear to stem from "generalizations or stereotypes" about parents with disabilities.

2. DCYF Failed to Communicate with J.C-C in an Accessible Manner

The ADA and Sec. 504 require DCYF to take appropriate steps to ensure effective communications with the parent. DOJ/HHS Technical Assistance at 6. It does not appear that DCYF ever asked or determined whether J.C-C required aids or adaptations to effectively communicate, assessed her communication strengths and limitations, or asked her in what way she communicates best. But, even without more information about J.C-C's best method of communication the record calls into question whether DCYF appropriately tailored their communication with her.

Here the social worker's communications appear aimed at a very high literacy level. But the National Research Center for Parents with Disabilities suggests that when communicating with parents with an intellectual disability, professionals:

> Use repetition, visual demonstrations, and concrete examples to help fix concepts in parents' minds. Many individuals with intellectual disabilities have limited literacy, so ensure informational materials do not require large amounts of reading. If you must produce materials that require reading, make sure paragraphs and sentences are

> short, simple, and do not contain too many concepts at once."[11]

The social worker testified that she believed J.C-C understood because her answers to questions seemed appropriate and reasonable. RP 130. That assumption is an insufficient basis to establish that services were understandably offered in a manner tailored to the mother's learning style. "[T]he oppression most people with disabilities experience in their lifetimes can affect their ability to self-advocate." *Rocking the Cradle*, at 95. Communicating with social workers is incredibly fraught for any parent trying to navigate the child welfare system – but for a parent who fears being judged based on their disability, it can be particularly difficult to speak up and announce that she is struggling to understand.

3. The State Failed to Provide the Mother an Equal Opportunity to Engage in Services

The services provided to J.C-C were not tailored to her individual needs both because the state did not conduct an individualized assessment of her strengths and deficiencies as a parent and because no accommodations were made to allow the mother to access services.

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[11] National Research Center For Parents With Disabilities, The Heller School For Social Policy And Management At Brandeis University, *Advice For Professionals Working With Parents With Intellectual Disabilities,* available at: https://heller.brandeis.edu/parents-with-disabilities/info-resources-research-briefs/advice-for-professionals/index.html.

Upon learning that the mother had an intellectual disability, it does not appear that DCYF ever determined whether or how her parenting deficiencies related to her disability. Instead, DCYF appears to have assumed, impermissibly, that her parenting deficiencies were caused by her intellectual disability and mental illness. It does not appear that DCYF asked J.C-C to share information about the nature of her disability. Certainly, DCYF never took the additional step of requesting, or asking the Court to order, an individualized assessment by an expert on working with parents with intellectual disabilities.[12] Finally, it does not appear that DCYF obtained information from any past evaluations or assessments that could help the Department tailor her service plan.

Without that information, the service plan DCYF generated for J.C-C could not have been tailored to meet her individual needs because the preliminary step – identifying her needs – was not taken. *Cf. Matter of D.H.*, 195 Wn.2d at 727 (finding that the mother was provided with a neuropsychological evaluation, which determined she was cognitively capable of learning and understanding the material, offered guidance for how she would learn best -- repetition, role modeling, rehearsal and

[12] The record shows that DCYF intended to offer the mother an unadapted psychological assessment. Unfortunately, parents with disabilities are often evaluated using inappropriate and unadapted assessments. *Rocking The Cradle*, at 132.

correction, and concepts broken down in parts – which the mother's services providers actively applied).

Further, the services that were provided were not modified to accommodate the mother. The types of accommodations required will vary based on the needs of the parent before the court. "For example, if a child welfare agency provides classes on feeding and bathing children and a mother with an intellectual disability needs a different method of instruction to learn the techniques, the agency should provide the mother with the method of teaching that she needs." DOJ/HHS Technical Assistance at 5.[13] Here it does not appear that DCYF made any accommodations for J.C-C. For example, DCYF did not offer hands-on training or in-home services.

When J.C-C was provided hands-on training during her second child's medical appointments the record demonstrates that she was capable of learning and safely parenting. Testimony at trial demonstrated that J.C-C's parenting skills greatly improved with the help of Dr. Furner. RP 172-182. As Dr. Furner testified, J.C-C was able to learn how to do "an amazing

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[13] Some accommodations may include: hands-on training during a child's medical and early intervention services appointments; plain language training materials at appropriate literacy levels; assessment by an expert on working with parents with disabilities; and other modified family preservation and reunification services. 2020 DOJ/HHS Agreement at Appendix B. Likewise, The Arc, a national advocacy organization for people with disabilities lists examples of supports that help parents provide appropriate care their children, including in-home visits to teach parenting skills and to assess parenting competency. The Arc, *Parents with Intellectual Disabilities*, available at: https://thearc.org/wp-content/uploads/forchapters/Parents%20with%20I_DD.pdf

job" after Dr. Furner provided frequent redirection and worked with her over the course of several visits on how to care for children. RP 168, 172, 182. Accordingly, the record demonstrates that when services are tailored to her individual needs and adapted to her learning style J.C-C is capable of safely caring for a newborn baby. This is consistent with the ADA and Sec. 504 findings and why there are clear federal obligations to provide accommodations to parents with disabilities. Yet, with regards to M.A.S.C., J.C-C was denied a full and equal opportunity to participate in her service plan because services were not tailored to accommodate her unique needs, because those needs were never identified and because the services that were offered to her were not adapted for J.C-C.

4. DCYF Did Not Coordinate Services with DDA, As Required

Although the RCW 13.34.136 requires DCYF to coordinate with DDA when a parent is eligible for services, here, DCYF and the dependency court turned that responsibility on J.C-C, ordering her to contact the developmental disabilities administration as a service:

> 15. [J.C.] will explore and utilize available options for assistance through DDD and SSI qualified providers (as agreed upon through the Department).

It does not appear that DCYF reached out to DDA to determine whether J.C-C was eligible for services and did not take the additional steps

to coordinate the provision of services or tailor services taking into consideration her disability.

V. CONCLUSION

The only way to protect the rights of parents with an intellectual disability, and to prevent the erroneous termination of parental rights, is for courts to require DCYF to meet minimum requirements set forth under the ADA and Sec. 504, and to coordinate services with DDA as required by statute, before terminating parental rights. Because DCYF failed to satisfy these requirements in this case, the termination order must be reversed.

DATED this 24th day of February 2021.

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